

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4440**

BY DELEGATES STORCH, FLEISCHAUER, HAMILTON,  
FLUHARTY, HORNBUCKLE, LONGSTRETH, UPSON, BLAIR,  
SYPOLT, GRAVES AND ROWAN

[Introduced February 6, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §5-11-9 of the Code of West Virginia, 1931, as amended, relating  
2 to the “Equal Pay Act of 2018”; making it unlawful for an employer to require, as a condition  
3 of employment, that an employee refrain from disclosing information about his or her  
4 wages, benefits, or other compensation or sharing information about another employee’s  
5 wages, benefits, or other compensation; making it unlawful for an employer to prohibit  
6 employees from disclosing information about his or her wages, benefits, or other  
7 compensation or sharing information about another employee’s wages, benefits, or other  
8 compensation.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 11. HUMAN RIGHTS ACT.**

### **§5-11-9. Unlawful discriminatory practices.**

1 It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational  
2 qualification, or except where based upon applicable security regulations established by the  
3 United States or the State of West Virginia or its agencies or political subdivisions:

4 (1) For any employer to discriminate against an individual with respect to compensation,  
5 hire, tenure, terms, conditions, or privileges of employment if the individual is able and competent  
6 to perform the services required even if such individual is blind or disabled: *Provided*, That it shall  
7 not be an unlawful discriminatory practice for an employer to observe the provisions of any bona  
8 fide pension, retirement, group or employee insurance or welfare benefit plan or system not  
9 adopted as a subterfuge to evade the provisions of this subdivision: *Provided, however*, That an  
10 employer ~~may~~ may grant preference in hiring to a veteran or a disabled veteran in accordance with  
11 the provisions of §5-11-9a of this code without violating the provisions of this article.

12 (2) For any employer, employment agency or labor organization, prior to the employment  
13 or admission to membership, to: (A) Elicit any information or make or keep a record of or use any  
14 form of application or application blank containing questions or entries concerning the race,  
15 religion, color, national origin, ancestry, sex, or age of any applicant for employment or

16 membership; (B) print or publish or cause to be printed or published any notice or advertisement  
17 relating to employment or membership indicating any preference, limitation, specifications or  
18 discrimination based upon race, religion, color, national origin, ancestry, sex, disability, or age; or  
19 (C) deny or limit, through a quota system, employment or membership because of race, religion,  
20 color, national origin, ancestry, sex, age, blindness, or disability;

21 (3) For any labor organization because of race, religion, color, national origin, ancestry,  
22 sex, age, blindness, or disability of any individual to deny full and equal membership rights to any  
23 individual or otherwise to discriminate against such individual with respect to hire, tenure, terms,  
24 conditions or privileges of employment or any other matter, directly or indirectly, related to  
25 employment;

26 (4) For an employer, labor organization, employment agency or any joint labor-  
27 management committee controlling apprentice training programs to:

28 (A) Select individuals for an apprentice training program registered with the State of West  
29 Virginia on any basis other than their qualifications as determined by objective criteria which  
30 permit review;

31 (B) Discriminate against any individual with respect to his or her right to be admitted to or  
32 participate in a guidance program, an apprenticeship training program, on-the-job training  
33 program or other occupational training or retraining program;

34 (C) Discriminate against any individual in his or her pursuit of such programs or to  
35 discriminate against such a person in the terms, conditions or privileges of such programs;

36 (D) Print or circulate or cause to be printed or circulated any statement, advertisement or  
37 publication, or to use any form of application for these programs or to make any inquiry in  
38 connection with a program which expresses, directly or indirectly, discrimination or any intent to  
39 discriminate unless based upon a bona fide occupational qualification;

40 (5) For any employment agency to fail or refuse to classify properly, refer for employment  
41 or otherwise to discriminate against any individual because of his or her race, religion, color,

42 national origin, ancestry, sex, age, blindness, or disability;

43 (6) For any person being the owner, lessee, proprietor, manager, superintendent, agent,  
44 or employee of any place of public accommodations to:

45 (A) Refuse, withhold from or deny to any individual because of his or her race, religion,  
46 color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any  
47 of the accommodations, advantages, facilities, privileges, or services of the place of public  
48 accommodations;

49 (B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written  
50 or printed communication, notice or advertisement to the effect that any of the accommodations,  
51 advantages, facilities, privileges, or services of any such place shall be refused, withheld from or  
52 denied to any individual on account of race, religion, color, national origin, ancestry, sex, age,  
53 blindness, or disability, or that the patronage or custom thereof of any individual, belonging to or  
54 purporting to be of any particular race, religion, color, national origin, ancestry, sex, or age, or  
55 who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited;  
56 or

57 (7) For any employer to:

58 (A) Require, as a condition of employment, that an employee refrains from disclosing,  
59 discussing, or sharing information about the amount of his or her wages, benefits or other  
60 compensation, or from inquiring, discussing or sharing information about any other employee's  
61 wages, benefits or other compensation; or

62 (B) Require an employee to sign a waiver or other document that denies the employee  
63 the right to disclose the amount of his or her wages, benefits or other compensation or to inquire  
64 about, discuss or share information about any other employee's wages, benefits or other  
65 compensation; or

66 ~~(7)~~ (8) For any person, employer, employment agency, labor organization, owner, real  
67 estate broker, real estate salesman or financial institution to:

68 (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with  
69 others to commit acts or activities of any nature, the purpose of which is to harass, degrade,  
70 embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any  
71 person to engage in any of the unlawful discriminatory practices defined in this section;

72 (B) Willfully obstruct or prevent any person from complying with the provisions of this  
73 article, or to resist, prevent, impede or interfere with the commission or any of its members or  
74 representatives in the performance of a duty under this article; or

75 (C) Engage in any form of reprisal or otherwise discriminate against any person because  
76 he or she has opposed any practices or acts forbidden under this article or because he or she  
77 has filed a complaint, testified or assisted in any proceeding under this article.

NOTE: The purpose of this bill is to be known as the "Equal Pay Act of 2018". The bill makes it an unlawful discriminatory practice for an employer to make a condition of employment, or prohibit an employee from disclosing information about his or her wages, benefits, or other compensation, or sharing information regarding any other employee's wages, benefits, or other compensation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.